

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 7, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 00-1774

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DANIEL T. SHEA,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
PATRICK J. FIEDLER, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

¶1 PER CURIAM. Daniel Shea appeals from the trial court's order denying his motion for postconviction relief brought pursuant to WIS. STAT.

§ 974.06 (1999-2000).¹ Shea raises several issues addressing the prosecutor's alleged failure to provide him with discovery materials.² We affirm.

¶2 Shea was convicted of two counts of forgery and one count of fraudulent use of a financial transaction card. We affirmed the convictions, rejecting Shea's claim that he received ineffective assistance of trial counsel because counsel did not object to certain jury instructions. Shea then filed a motion in the trial court alleging ineffective assistance of counsel during postconviction and appellate proceedings. He argued that counsel should have raised the issue of ineffective assistance of trial counsel based on trial counsel's alleged failure to compel the prosecution to provide all discovery documents.³ Shea also contended that the prosecutor failed to provide him with exculpatory evidence prior to trial in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), and he moved the trial court to compel postconviction discovery. After a hearing, the trial court rejected Shea's claims.

¶3 Although Shea couches his primary complaint in terms of the actions of his counsel during postconviction and appellate proceedings, the crux of his argument is that he received ineffective assistance of *trial* counsel because counsel did not more aggressively pursue discovery. After considering testimony from the district attorney, Shea, and Shea's attorney, the trial court found that the

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

² Shea contends that his claims are not procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), because he received ineffective assistance of counsel during postconviction and appellate proceedings, which is a "sufficient reason" for failing to previously raise the issues. We will consider Shea's arguments on the merits.

³ Shea's counsel filed at least five different motions for discovery.

prosecutor had complied with all discovery demands. We will not overturn the trial court's factual finding unless it is "clearly erroneous." WIS. STAT. § 805.17(2). Shea has submitted nothing, other than his own allegations, to call the trial court's factual finding in this regard into question.

¶4 Shea's argument that the prosecutor did not comply with his discovery demands appears to be based, in part, on his belief that he was provided synopses of the police reports, rather than "the original investigator narrative reports." The prosecutor explained that the usual practice of the police department is to make notes about events and investigations as they occur and then to fill out a police report based on the notes, which are destroyed. Shea did not present any evidence to the trial court that notes from which the police reports were made in this case were in existence when he made his document request and had been withheld from him or that the information in the police reports he received was incomplete or inaccurate.

¶5 In sum, we reject Shea's claim that his trial counsel's performance was deficient for failing to more aggressively pursue discovery based on the trial court's factual finding that Shea was provided with all documents in the prosecutor's possession. *See State v. Pitsch*, 124 Wis. 2d 628, 636-37, 369 N.W.2d 711 (1985). By extension, Shea's claim of ineffective assistance of counsel during postconviction and appellate proceedings must also fail. As for Shea's motion to compel postconviction discovery and his claim that the prosecution withheld exculpatory evidence in violation of *Brady*, 373 U.S. at 87, Shea has presented nothing that suggests that the documents he seeks exist, or that if they do exist, they are material. Therefore, we also reject these claims.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)5.

